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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,138	12/06/2001	Brian Ingraham	24180-897001	4779

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EXAMINER

NOLAN, SANDRA M

ART UNIT PAPER NUMBER

1772

DATE MAILED: 04/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/010,138

**Applicant(s)**

INGRAHAM, BRIAN

**Examiner**

Sandra M. Nolan

**Art Unit**

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) 1-19 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 44 and 45 is/are allowed.
- 6) ☒ Claim(s) 20-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claims***

1. Claims 1-40 are pending. Claims 1-19 are withdrawn.

***Rejection Maintained***

2. The 35 USC 103 rejection of claims 20-40 as unpatentable over Shepard et al (US 6,068,933), as set out in section 6 of the 14 July 2003 office action, is maintained for reasons of record. *That rejection now applies to claims 20-43.*

***New Rejection***

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 20-24, 26-30 and 41-43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "ionomer" is indefinite because it does not describe a chemically distinct material, as the other terms in the Markush groups of claims 20, 24, 26, 41 and 43 do. Please clarify.

***Allowable Subject Matter***

5. Claims 44 and 45 are allowed.
6. The prior art of record fails to teach or suggest food packaging comprising a top web having the laminar structure recited in claim 44.

***Response to Arguments***

7. Applicant's arguments filed in the 14 January 2004 response have been fully considered but they are not persuasive.

They will be responded to in the order in which they were presented.

On page 13 of the response, applicant argues that Shepard teaches film structures containing seven layers with the sealant layer comprising a blend of LLDPE and LDPE and that its films are for foods.

The examiner agrees with this characterization of Shepard.

On page 14, applicant argues that Shepard's film differs from his because applicant is packaging frozen food and Shepard's sealant layer is sealable to a thermoformable multilayer film.

However, these arguments are not persuasive because the films of Shepard are used to package foods (col. 1, about line 13) and--as applicant pointed out in the last two lines on page 13 of the 14 January 2004 response--his films may be heat sealed to thermoformable multilayer films too.

Also, applicant's use of his films to encase frozen foods is a matter of intended use and does not serve to distinguish them from the films suggested by the combination of Shepard and Hwo.

On page 14 of the response, applicant argues that Hwo does not teach that a single component, such as a butene-1 homo- or copolymer or single low density polyethylene (LDPE), is useful in sealant layers.

However, it is noted that applicant's claims all describe the seventh layer as "comprising" one or more of the polymers listed in claims 20, 24, 26, 41 and 43. Since both Shepard and Hwo teach LDPE in sealant layers\*, the argument that Hwo's polybutene/LDPE blend does not suggest layers comprising LDPE is unconvincing. (\*Recall the discussion in the first sentence of page 13 of the response and the second full sentence on page 14 thereof.)

Finally, on page 15 of the response, applicant argues that Hwo's discussion of the need for peelable seals and its combination sealant layers is not sufficient motivation to combine the Shepard and Hwo teachings.

However, the examiner disagrees and points to the fact that applicant has not presented any convincing objective evidence to show that the Shepard and Hwo teachings are not properly combined.

### ***Final Rejection***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any


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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

**Conclusion**

Any inquiry concerning this communication should be directed to Sandra M. Nolan, whose telephone number is 571/272-1495. She can normally be reached on Monday through Thursday, from 6:30 am to 4:00 pm, Eastern Time. If attempts to reach the examiner are unsuccessful, her supervisor, Harold Pyon, can be reached at 571/272-1498.

The fax number for patent application documents is 703/872-9306.



S. M. Nolan  
Primary Examiner  
Technology Center 1700

SMN/smn  
10010138(20040412)